CF 11800/-

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

F.A.NO. 175 /2003

Single Bench

APPELLANT
PLAINTIFF : Ramlal Korram S/o Rajman Korram,
Aged about 52 years,
R/o Telebandha, Raipur
Tahsil & District:Raipur (CG).

VERSUS

(12)

RESPONDENTS
DEFENDANTS : 1) Sona Bai W/o Late Banau
Aged about 69 years,

2) Smt. Mehtarin
W/o Shiv Prasad Dhruv,
D/o Late Banau,
Aged about 44 years,

Both resident of Telebandha,
Raipur,Teh.& Distt.Raipur (CG).

(NOTE: Originally Banau Gond was the defendant, however, during the pendency of the suit he has died and the respondent No.1&2 are the legal representatives have been made defendants. Though the name of Banau has been mentioned in the impugned judgement as defendant but as he is a dead person he is not being impleaded as Defendant).

P.R. No. 2000/03
Presented by Shri Gautam Khobragade
dated 30/06/03

FIRST APPEAL UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE

Appeal valued At Rs. One Lac. Court fee affixed worth Rs. 11,800/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal No.175 of 2003

Appellant Plaintiff : **Ramlal Korram,**
S/o Rajman Korram, Aged about 52 years, R/o Telibandha, Raipur, Tahsil & District Raipur (C.G.).

Versus

Respondents Defendants :

1. **Sona Bai,**
W/o Late Banau, Aged about 69 years,

2. **Smt. Mehtarin,**
W/o Shiv Prasad Dhruv, D/o Late Banau, Aged about 44 years,

Both residents of Telibandha, Raipur, Teh. & Distt. Raipur (C.G.).

Mr. Ravish Chandra Agrawal, Senior Advocate with Mr. Sanjay S. Agrawal, counsel for the appellant.

Mr. Alok Aradhe and Mr. Sumesh Bajaj, counsel for the respondents.

J U D G M E N T

(Delivered on 30 -8-2005)

Per Vijay Kumar Shrivastava, J.

This appeal has been directed against the judgment and decree dated 14-8-2003, passed by IVth Additional District Judge,

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Raipur, in Civil Suit No.25-A/2001, dismissing the suit filed by the plaintiff for specific performance of contract.

2. The plaintiff filed a suit for specific performance of contract against defendant Banau, who had entered into an agreement with him for sale of land bearing Khasra No.425/1 and 425/2 situated at Telibandha, Raipur measuring 0.079 and 0.237 hectares respectively for a consideration of Rs.1 Lakh. The consideration was paid by the plaintiff to Banau by banker's cheque on the date of agreement itself. It was agreed by the defendant Banau that, soon after getting the permission from the competent authorities i.e. Urban Ceiling Department and other departments, he will execute registered sale-deed in favour of the plaintiff. The plaintiff was regularly in touch with the defendant Banau and always had been requesting him for execution of the registered sale-deed, but defendant Banau, on one or the other pretext avoided the same. The defendant Banau intending to sell the suit land, got published news in a daily newspaper on 1-10-1998, therefore, the plaintiff, raising objection to it, filed the suit against the defendant Banau for specific performance of contract. During the pendency of the suit, the defendant Banau died and his legal representatives were brought on record in his place.

3. Although the legal representatives of the deceased defendant Banau i.e. the present defendants admitted execution of agreement dated 7-12-1995, yet denied the claim of the plaintiff averring that the deceased Banau had taken a loan of Rs.1 Lakh from one Shri Abdul Sattar for completing construction of his house, and in lieu of that loan, deceased Banau had executed the

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agreement and the said agreement was got registered. The suit land is in occupation of joint family of the defendants. The deceased Banau was a member of Scheduled Tribe, therefore, for sale of the land, necessary permission was required to be taken from Collector under the C.G. Land Revenue Code, 1959. Deceased Banau was old, illiterate and his eyesight was weak, therefore, Abdul Sattar, taking advantage of these circumstances, got executed the said deed only for the security of the loan. The suit land is still in possession of the defendants. On the date of execution of the sale-deed, the land was costing Rs.5 Lakhs. After execution of the deed, for getting registered sale-deed, the plaintiff never agreed and ready to perform his part, and by personating some other person, as Ramlal, filed the suit.

4. Both the parties have adduced their evidence in support of their respective claims. Learned trial Court, after evaluating the same, has held that, the agreement dated 7-12-1995 has been executed for security of the loan taken by the ~~plaintiff~~ Banau from Abdul Sattar. The thumb impression has been obtained on the deed taking advantage of illiteracy, old age and weak eyesight of the deceased Banau. Learned trial Court has further held that, the plaintiff not entitled for specific performance of the contract dated 7-12-1995.

5. During the pendency of this appeal, the appellant filed an application, I.A.No.1215/2005, under Order XLI Rule 27 of the Code of Civil Procedure (henceforth 'the Code') along with certain documents averring that learned trial Court, taking into consideration the financial status of the appellant as well as holding the agreement a Benami transaction, has passed the impugned

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judgment and decree, whereas in fact the appellant possesses a sound financial status. Earlier Banau and Ganeshi Bai had executed another agreement with the appellant Ramlal and one Injan Ram and thereafter executed registered sale-deed. The appellant had a high social status being in past President of Janpad Panchayat and thereafter Member of Janpad Panchayat, and to support the pleading, has annexed documents, which are Khasra entries, copy of revenue map, certificate issued by R.T.O., Raipur in favour of Sunil Kumar, who is the son of the appellant, documents to show that tractor and trolley belongs to Sunil Kumar, the son of the appellant. Execution of agreement dated 4-12-1995 by Bhanu Bai and Ganeshi Bai and thereafter registered sale-deed executed by them, certificate issued by Allahabad Bank and other certificates to show the status of the appellant.

6. The respondent No.1 refuted the application and averred that the judgment and decree passed by the trial Court does not solely rest on the financial status of the appellant, but rests on other factors also. The agreement executed by Smt.Bhanubai and Ganeshi Bai on 4-12-1995 relates to a different transaction. Documents relating to ownership of tractor and trolley in the name of Sunil Kumar, the son of the appellant are not relevant documents. Without fulfillment of condition required under Order XLI Rule 27 of the Code; only to fill-up the lacuna; neither the application is permissible to be allowed nor documents annexed thereto can be taken on record.

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7. Learned counsel for both the parties are heard on merit as well as on I.A.No.1215/2005. Record of the trial Court is perused.

8. Order XLI Rule 27 of the Code reads as below :-

O. XLI R. 27 : **"Production of additional evidence in Appellate Court.** – (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

9. From the aforesaid provision, it is evident that the appellant has not preferred this application inconformity with the condition as laid down under clauses (a) and (aa) of sub-rule (1) of Rule 27 of Order XLI of the Code, therefore, if the appellate Court requires the said document to enable it to pronounce judgment or

for any other substantial cause, in that case only, the documents proposed to be tendered during the pendency of the appeal can be taken on record.

10. The documents annexed with the application relating to the ownership of the tractor and trolley in the name of Sunil Kumar, who is the son of the appellant, have no bearing in this case as well as earlier agreement to sell and thereafter execution of registered sale-deed by Bhanu Bai and Ganeshi Bai in favour of Injan Ram and Ramlal has also no impact on the case. One certificate issued by Allahabad Bank to show that Abdul Sattar obtained three banker's cheque in the name of Banau Ram does not state that the cash deposited by Abdul Sattar was the amount received from sources other than encashment of amount from his own account, therefore, the said document has also no relevance with the case. Various documents relating to Khasra entries and certificates certifying that the appellant was earlier President of Janpad Panchayat or Member thereof, if accepted to be true, can only show that the appellant has immovable property as well as he was a respectable person in the village, but the case before the trial Court as well as in appeal does not depend on the aforesaid conditions. The sole dispute raised before the trial Court was that whether towards security of loan advanced by Abdul Sattar, the agreement, said to be agreement to sell, has been got executed by Abdul Sattar in the name of the appellant, and the same is the question involved to be determined in this appeal. All the documents were in the knowledge of the appellant, and the appellant, despite the dispute raised by the respondents, did not file those documents during trial before the lower Court and at this appellate stage, after going

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through the judgment, only to fill up some of the lacuna, is seeking permission to adduce all those documents for the first time which is not permissible.

11. From the aforesaid discussion, I am of the opinion that neither the application has been filed on the ground mentioned in clauses (a) and (aa) of sub-rule (1) of Rule 27 of Order XLI of the Code nor the application and documents fulfilled the condition under clause (b) of sub-rule (1) of Rule 27 of Order XLI of the Code. Therefore, the application, I.A.No.1215/2005, filed by the appellant deserves to be dismissed and is accordingly dismissed.

12. Mehtarin Bai Dhruv, D.W.-1, the daughter of the deceased defendant Banau, in her evidence, deposed that, her father Banau was in need of money for completing the construction of his house, therefore, he demanded a loan of Rs.1 Lakh from Abdul Sattar. Abdul Sattar asked him to execute a sale-deed in lieu of the loan and also told him that neither her father was selling the land nor Abdul Sattar was buying it. Abdul Sattar purchased the stamp, got it written and without reading it over to her father Banau, obtained his signature or thumb impression on the agreement. The amount of Rs.1 Lakh was advanced to her father for 3 years on interest at the rate of 2% per month. After execution of the agreement, possession was not delivered to Abdul Sattar, and in fact, it remained with Banau and thereafter she is in possession.

13. The evidence of Mehtarin Bai Dhruv, D.W.-1 finds support from the evidence of the plaintiff Ramlal Korram, P.W.-1, who has admitted in para 9 of his evidence that, the deceased

defendant Banau Ram was illiterate, old-aged and his eyesight was weak. He has also admitted that, the bank draft was obtained by Abdul Sattar from his own account and the agreement, Ex.P-1 was also got prepared by Abdul Sattar himself. He has also admitted that, at the relevant time, the house of the deceased defendant Banau Ram was under construction. He has further admitted in para 15 of his evidence that, the transaction took place between Banau Ram and Abdul Sattar.

14. From the admission of the plaintiff Ramlal Korram, P.W.-1, it is established that, at the relevant time, construction of house of Banau Ram was in progress. Transaction took place between Banau Ram and Abdul Sattar. The amount was withdrawn from the account of Abdul Sattar and Abdul Sattar himself got the bank draft prepared for payment to Banau. Even the deed, Ex.P-1 was got prepared by Abdul Sattar.

15. From the aforesaid admissions of the plaintiff himself, the statement of Mehtarin Bai Dhruv, D.W.-1 appears to be credible, and from the evidence of Mehtarin Bai Dhruv, D.W.-1 and admission of Ramlal Korram, P.W.-1, it is proved that, a sum of Rs.1 Lakh was paid to Banau through bank draft or banker's document, and the said amount was withdrawn from the account of Abdul Sattar. The transaction took place between Abdul Sattar and Banau. Learned trial Court, after taking into consideration the evidence available on record and appreciating the same, has correctly held that, the agreement dated 7-12-1995 has been executed fictitiously in the name of the plaintiff at the instance of

Abdul Sattar, who had got it executed on 7-12-1995 towards security of the loan advanced to Banau.

16. Section 16(c) of the Specific Relief Act, 1963 reads as below : -

> **Sec. 16** : **"Personal bars to relief.** – Specific performance of a contract cannot be enforced in favour of a person –
>
> (a) xxxxx xxxxx xxxxx
>
> (b) xxxxx xxxxx xxxxx
>
> (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.
>
> Explanation. – For the purposes of clause (c), -
>
> (i) where a contract involved the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;
>
> (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

17. Hon'ble the Apex Court, in the matter of **His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar, reported in (1996) 4 SCC 526**, has held that, in a suit for specific performance of contract for sale of land, it is necessary that, the plaintiff should be ready and willing to perform his part, and readiness and willingness can be ascertained from the conduct of the party and attending circumstances, and if it is held that, the plaintiff was

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neither ready nor willing to perform his part of the contract, no decree for specific performance of contract in his favour can be passed.

18. Hon'ble the Apex Court, in **Lourdu Mari David and others vs. Louis Chinnaya Arogiaswamy and others, reported in AIR 1996 SC 2814**, has observed that –

> "Under Section 20 of the Specific Relief Act, the decree for specific performance is in the discretion of the Court, but the discretion should not be refused arbitrarily. The discretion should be exercised on sound principles of law capable of correction by an appellate Court. It is settled law that the party who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. In other words, the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief."

19. Section 165(6) of the C.G. Land Revenue Code, 1959 reads as below : -

> **Sec. 165 : "Rights of transfer.** – (1) xxx xxx xxx
> (2) xxx xxx xxx xxx
> (3) xxx xxx xxx xxx
> (4) xxx xxx xxx xxx
> (5) xxx xxx xxx xxx
>
> (6) Notwithstanding anything contained in sub-section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall –
>
> (i) in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of

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transaction of loan to a person not belonging to such tribe in the area specified in the notification;

(ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.

Explanation. – For the purposes of this sub-section the expression "otherwise" shall not include lease."

20. It is apparent that, land belonging to a tribe is not transferable by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of competent revenue authority, and to obtain a decree for specific performance of contract for sale, it is necessary for the buyer to prove his readiness and willingness to get his part performed, that too, for obtaining such a relief, the plaintiff must approach the Court with clean hands.

21. Admittedly, the plaintiff and defendants are members of Scheduled Tribe but Abdul Sattar is not a person belonging to Scheduled Tribe, therefore, he, without having permission from any competent revenue authority, had no authority to enter into a contract with deceased defendant Banau for sale of the suit land. The plaintiff Ramlal Korram has admitted in specific term that, whatever transaction had taken place, that was between Abdul Sattar and Banau. Even he admits that, the consideration was paid from the account of Abdul Sattar, and Abdul Sattar himself

withdrew the amount from his account, got the bank draft prepared and also got the document Ex.P-1 prepared, whereas contrary to it, his suit is on the pleading that, the land has been purchased by him under the agreement, Ex.P-1 and the consideration was paid by him. Therefore, it is apparent that, the plaintiff Ramlal Korram has not approached the Court with clean hands, and reality is that, Abdul Sattar, to advance a loan of Rs.1 Lakh to Banau, got prepared the agreement, Ex.P-1 in the name of the plaintiff Ramlal Korram, who is a member of Scheduled Tribe, so as to avoid the provision of Section 165(6) of the C.G. Land Revenue Code, 1959.

22. Ramlal Korram, P.W.-1, who is the plaintiff, in his plaint, has pleaded that, he was always ready to perform his part of the contract and still ready and willing to perform his part, but in the evidence, he has admitted that, after execution of the agreement, Ex.P-1, he never met Banau. Even at para 11 of his evidence he says that for getting prepared the plaint he did not consult or meet the counsel. He also did not deny if Abdul Sattar had consulted or met the counsel for getting prepared the plaint. All his admissions themselves prove that, neither he was ready nor willing to get the sale-deed executed in his favour. From the evidence, it is established that, after execution of the agreement to sell, Ex.P-1, the plaintiff never remained willing and ready to perform his part, and he, knowing well that, the transaction has taken place between Abdul Sattar and Banau, the amount has been advanced by Abdul Sattar to Banau, and only to evade the provision of Section 165(6) of the C.G. Land Revenue Code, 1959, the agreement has been got executed in his name, despite that he brought the suit. It means, the plaintiff has filed the suit not only

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averring false facts but has also not come before the Court with clean hands. In all these circumstances, he is not entitled to any decree for specific performance of contract for sale in his favour.

23. It is apparent from the aforesaid evidence and discussion that, learned trial Court, in holding the plaintiff not to be entitled to a decree for specific performance of contract for sale in his favour, has not committed any error.

24. In the result, the appeal fails and is dismissed with cost.

Sd/-
V.K. Shrivastava
Judge
30-8-2005

G.Singh